FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 146 /2007
(Shri Satish Ramkrushna Dhabekar Vs. Shri Sudhakar Ramkrushna Latkar)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. S.B. Ahirkar with Mr. Kailash Rawandhe, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 17th September, 2007.

Heard Shri Ahirkar for the appellant.

The appellant is the original defendant. A suit was filed by the plaintiff for specific performance of contract for sale of plot which is the suit property. An agreement was executed between the parties on 26/8/1995. The defendant had agreed to sell the suit plot to the plaintiff for a total consideration of Rs. 52,500/- and earnest amount of Rs. 12,500/- was paid to the plaintiff at the time of execution of the agreement for sale. The balance amount of Rs. 40,000/- was payable at the time of execution of the sale deed which was to be executed on or before 20/12/1995. According to the plaintiff, the defendant did not obtain the necessary No Objection Certificates from the Nagpur Improvement Trust, the Municipal Corporation and the Cooperative Society from which the defendant

had purchased the suit property. The plaintiff further pleaded that on 26/12/1995, the plaintiff paid an amount of Rs. 20,000/- to the defendant by cheque and the defendant also acknowledged a receipt thereof. Thereafter, according to the plaintiff, he was continuously ready and willing to perform his part of the contract, but the defendant failed to perform his part of the contract. The plaintiff, therefore, instituted a suit for specific performance of contract.

The defendant denied the claim of the plaintiff and further denied that the plaintiff was ever ready and willing to perform his part of the contract. The defendant pleaded that time was the essence of the contract and it was stated in the agreement of sale dated 26/8/1995 that if the plaintiff failed to pay the balance amount prior to 20/12/1995 and failed to get the sale deed executed from the defendant, the contract would stand cancelled and the earnest amount of Rs. 12,500/- would be forfeited by the defendant. The defendant then pleaded that time was the essence of the contract and since the plaintiff had failed to perform his part of the contract in accordance with the terms of the agreement of sale, the suit filed by the plaintiff was liable to be dismissed. It was also pleaded by the defendant that subsequently, since the plaintiff approached the defendant with a

cheque for Rs. 20,000/- on 26/12/1995, the defendant accepted the cheque but on that day i.e. on 26/12/1995, it was agreed between the plaintiff and the defendant that the plaintiff would get the sale deed executed on the immediate next day i.e. on 27th December,1995. Since the plaintiff failed to attend the office of the Sub Registrar on 27/12/1995, according to the defendant, it was clear that the plaintiff was not ready and willing to perform his part of the contract. The defendant also pleaded that it was agreed between the parties that the plaintiff would secure the No-Objection Certificates from the concerned Government and semi-Government authorities and the obligation to secure the certificates was not on the defendant. The defendant, therefore, sought for the dismissal of the suit filed by the plaintiff.

The trial Court framed the necessary issues and after considering the evidence tendered by the parties on record, held that the plaintiff had succeeded in proving that the plaintiff was ever ready and willing to perform his part of the contract. The Court further held that time was not the essence of the contract and the defendant had failed

to prove so, as, in case, the time was the essence of the contract, and the sale deed was to be executed

prior to 20/12/1995, then there was no propriety for the defendant to accept the amount of Rs. 20,000/- on 26/12/1995. The case of the defendant that the plaintiff agreed on 26/12/1995 that the balance amount would be paid on 27/12/1995 and the sale deed could be executed on 27/12/1995, was also not accepted by the trial Court in view of the fact that the defendant had encashed the cheque dated 26/12/1995 on 4/1/1996. In case, the time was extended only upto 27/12/1995 and the contract was to be cancelled in case the plaintiff failed to pay the balance consideration and get the sale deed executed on 27/12/1995, the defendant would not and ought not have encashed the cheque for an amount of Rs. 20,000/- on 4/1/1996. The Court considered this conduct of the defendant to hold that the defendant had not succeeded in proving that the time to execute the sale deed was extended upto 27/12/1995 in pursuance of an oral agreement entered between the parties on 26/12/1995. The Court further held that it was the responsibility of the defendant to secure the No Objection Certificates from the concerned authorities and the defendant had not

secured the same in spite of the issuance of notice by the plaintiff to the defendant in that regard. The

trial Court, therefore, exercised its discretion in favour of the plaintiff and granted a decree for specific performance of contract. The judgment passed by the trial Court was challenged by the defendant in appeal. The appellate Court confirmed all the findings recorded by the trial Court.

I have perused the agreement of sale at Exh. 36. I have also perused the judgments passed by the trial Court and the first appellate Court. The trial Court has rightly exercised the discretion in favour of the plaintiff and granted a decree for specific performance of contract. The discretion exercised by the trial Court is based on sound judicial principles which are laid down by the Courts from time to time. The first appellate Court was, therefore, not in a position to interfere with the discretion exercised by the trial Court.

The document at exh. 36 i.e. the agreement of sale dated 26/8/1995 clearly disclosed that the responsibility of securing necessary No Objection Certificates was with the defendant and though the agreement of sale clearly recited that the sale deed was to be executed on or before 20/12/1995, the acceptance of an amount of Rs. 20,000/- by the defendant after the expiry of the date for execution of the sale deed, clearly showed that the time was not the essence of the contract and the defendant had extended the time to

execute the sale deed. Since both the Courts have held that the plaintiff was ready and willing to perform his part of the contract and the defendant was not ready and willing to perform his part, the Courts have rightly granted a decree for specific performance of contract in favour of the plaintiff.

None of the questions of law stated in this second appeal, give rise to a substantial question of law. In fact, the findings recorded by both the Courts are pure findings of fact which do not give rise to any substantial question of law. Second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP